Crown Cork & Seal Company, Inc. *and* Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 14–CA–16021

24 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 14 June 1983 Administrative Law Judge Elbert D. Gadsden issued the attached decision. The Respondent filed exceptions and a supporting brief, counsel for the General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing its settlement offer after the Union had accepted it and by refusing to sign a contract in accordance with agreement reached with the Union. For the following reasons, we find merit in the exceptions raised with respect to these findings.

The significant facts are that on 28 July 1980 the Union was informed by letter that the Respondent intended to close its St. Louis, Missouri plant by the end of September 1980. Responding to this letter, the Union asked the Respondent to bargain with it over the effects of the closing. The Union and the Respondent had the first of several meetings in August 1980 to discuss the closing. Present at those meetings were the Respondent's industrial relations director, Harold Abrams, and Kenneth DeGrande, the Union's business representative. In the last meeting, held on 8 May 1981, the Respondent proposed a lump-sum settlement of $40,000 to be distributed to all production and maintenance employees. The Union rejected the offer. However, DeGrande told Abrams he would get back to him and see what could be worked out.

During May, June, and July, Abrams and DeGrande had several telephone conversations about the closing of the plant. On 13 July 1981 the Union and the Respondent reached a final agreement in settlement of severance pay for the clerical employees. That agreement was signed 22 July 1981. The issue of settlement for production and maintenance employees was still outstanding.

The Union and the Respondent did not have any further discussions until 4 January 1982 when DeGrande called Abrams and advised the Respondent that the Union might accept the $40,000 settlement. According to Abrams' testimony, DeGrande began the conversation by saying, "I assume the $40,000 is still on the table." Abrams replied, "You've got to be kidding." DeGrande answered that he was not kidding.

After checking with the Respondent's president, Abrams told DeGrande on 13 January 1982 to send its proposition in writing. The Respondent received the Union's written reply on 21 March 1982 and on 20 April 1982 informed the Union in writing that the decision to accept the $40,000 settlement was too late.

Finding that the Respondent never withdrew its offer before receiving the Union's acceptance, the judge concluded that the Respondent's settlement offer was still viable on 4 and 13 January when the Union orally accepted and on 21 March when the Union accepted in writing. The judge ordered the Respondent to sign and execute a written contract reflecting the $40,000 settlement.

The judge relied on *Pepsi-Cola Bottling Co.*, 251 NLRB 187 (1980), enfd. 659 F.2d 87 (8th Cir. 1981), where the Board adopted a judge's finding that a company's 12 July offer, rejected by the union on 16 July, was still viable on 30 July when the union accepted the offer. The Board held that it was not bound by the technical rules of contract law and that: "a complete package proposal made on behalf of either party through negotiations remains viable, and upon acceptance *in toto* must be executed as part of the statutory duty to bargain in good faith, unless expressly withdrawn, prior to such acceptance . . . ." *Pepsi-Cola Bottling Co.*, 251 NLRB at 189.

In enforcing the Board's decision, the Eighth Circuit stated that "a contract offer is not automatically terminated by the other party's rejection or counterproposal, but may be accepted within a reasonable time unless it was expressly withdrawn prior to acceptance, was expressly made contingent upon some condition subsequent, or was subject to intervening circumstances which made it unfair to hold the offeror to his bargain." *Pepsi-Cola Bottling Co. v. NLRB*, 659 F.2d at 89–90.

The Respondent urges the Board to reconsider and overrule its decision in *Pepsi-Cola*, above. Even if *Pepsi-Cola* is not overruled, the Respondent contends that its 8 May settlement offer had lapsed before the Union accepted it.

We need not pass on the Respondent's request to overrule *Pepsi-Cola*. Rather, we agree with the Respondent's contention that the Union did not

accept the settlement offer within a reasonable time. The Board has held that what is reasonable always depends on surrounding circumstances. *Worrell Newspapers*, 232 NLRB 402 (1977).

Under the circumstances in this case, we hold that the Respondent's offer had lapsed. The Respondent had notified the Union of its decision to close the St. Louis plant over a year before it ceased operations. The parties had met a number of times to negotiate a settlement and in fact had reached a settlement for the clericals. After making its $40,000 settlement offer, the Respondent continued to wind down its operation and finally closed sometime in November or December 1981, 1 month before the Union's oral acceptance in January and 3 months before the Union's written acceptance. At least 10 months had passed between the Respondent's offer in May 1981 and the Union's written reply on 19 March 1982. During that time there was a period of 5 months where the Union and Respondent did not communicate at all. Thus, this is a case where an offer was ignored for an unreasonable period of time thereby leading the party making the offer to believe the offer was not being considered. See *Worrell Newspapers*, 232 NLRB at 407.

We distinguish this case from *Pepsi-Cola*. Unlike the 8- to 10-month lapse between the Respondent's offer and the Union's acceptance, the period in *Pepsi-Cola* between the company's offer and the union's acceptance was 18 days.

We see no reason to justify holding that the Respondent's offer remained open for such an extensive period of time and thus find that the Respondent's $40,000 settlement offer had lapsed before either the Union's oral or written acceptance. We therefore conclude that the Respondent has not violated Section 8(a)(5) and (1) of the Act. Accordingly, we shall dismiss the complaint.

ORDER

The complaint is dismissed.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge: Upon a charge of unfair labor practices filed on June 21, 1982, by Teamsters Local Union No. 688, herein called the Union or the Charging Party, against Crown Cork and Seal Company, Inc., herein called the Respondent, the Regional Director for Region 14 issued a complaint on behalf of the General Counsel on December 10, 1982, which was amended at the hearing herein.

In essence the complaint alleges that on May 8, 1981, the Respondent tendered a monetary offer for distribution to employees affected by the closing of its St. Louis, Missouri plant; that the Union tendered its acceptance of the monetary offer about March 19, 1982; that on or about April 20, 1982, the Respondent withdrew its monetary offer and, by so doing, it interfered with, restrained, and coerced employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act; and thereby correspondingly refused to bargain collectively with the representative of its employees in violation of Section 8(a)(5) of the Act.

The Respondent filed an answer on December 14, 1982, which was amended at the hearing, denying that it has engaged in any unfair labor practices as set forth in the complaint.

A hearing was held before me in St. Louis, Missouri, on March 11, 1983. Briefs have been received from counsel for the General Counsel and counsel for the Respondent, respectively, which have been carefully considered.

On the entire record in this case and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Crown Cork & Seal Company, Inc., the Respondent herein, is, and has been at all times material herein, a corporation duly organized to do business under the laws of the State of Missouri. In such capacity, at all times material herein, the Respondent has maintained its principal office and place of business at 9300 Aston Road, P.O. Box 6208, Philadelphia, Pennsylvania, herein called the Respondent's office. The Respondent also maintains other facilities in numerous States, but its facility formally located at St. Louis, Missouri, is the only facility involved in this proceeding.

During the 12-month period ending November 30, 1982, a representative period of the Respondent's business operations, the Respondent, in the course and conduct of its business operations, manufactured, sold, and delivered at its Pennsylvania facilities products valued in excess of $50,000 of which products valued in excess of $50,000 were shipped from said facilities directly to points located outside the Commonwealth of Pennsylvania.

The complaint alleges, the answer admits, and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Teamsters Local Union No. 688, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Union herein, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

The Respondent, Crown Cork & Seal Company, Inc., is formally engaged in the manufacture, nonretail sale, and distribution of containers and related products at its St. Louis, Missouri facility. At all times material during that period, the Union has been and the Respondent has recognized the Union as the designated exclusive collective-bargaining representative of its employees in the unit described below:

> All production and maintenance employees, excluding direct representatives of management such as executive, supervisory employees, time study men, office and clerical employees, chief shipping clerk, (receiving clerk) and plant guards, as defined under existing law, or those employees carried by union agreement with the Graphic Arts International Union, International Brotherhood of Electrical Workers and the International Association of Machinist and Aerospace Workers.

Such recognition by the Respondent of the Union herein has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period March 5, 1979, to March 7, 1982.

At all times material herein, Harold Abrams was a supervisor of the Respondent within the meaning of Section 2(11) of the Act and its agent within the meaning of Section 2(13) of the Act.

At all times material herein, Kenneth De Grande was the business representative of Teamsters Local 688, and in that capacity represented the Respondent's office clerical employees, as well as its production and maintenance employees. As such, De Grande oversaw and policed the administration of the collective-bargaining agreement between the Respondent and the production and maintenance employees (G.C. Exh. 3).

The Respondent closed its St. Louis, Missouri facility about November 1980.[1]

B. *Efforts by the Respondent and the Union to Achieve a Settlement Agreement With Respect to the Respondent's Plant Closing*

Union Business Representative Kenneth De Grande undisputedly testified that prior to July 28, 1980, he learned from the Respondent's manager, Chen Worth, that the Respondent was planning to close the St. Louis facility. Subsequently, he received a letter dated July 28, 1980, from the Respondent's director of industrial relations, Harold Abrams, the substance of which was as follows:

> A decision has been made and it now becomes my duty to officially inform you that the St. Louis, Missouri Plant will be closed. As of this writing, it is expected that the closing will occur by the end of September 1980.
>
> As professional business men, considering the business climate and related factors of this facility, we can no longer justify continuing these operations. It is hoped that this advance notification will aid each of the employees to plan their individual futures.
>
> I'm confident that everyone will continue working together up to the date of closing.

In a letter dated July 31, 1980, De Grande responded to the Respondent as follows:

> I have received your letter of July 28, 1980 regarding the closing of the St. Louis plant.
>
> I would like to meet with you as rapidly as possible to negotiate the effects of the closing.
>
> Please contact me at 314/658-5741 to set up dates for the negotiations.

Thereafter, De Grande and the five members of the Union's bargaining committee met with the Respondent in August 1980 regarding the shutdown of the St. Louis facility. Present for the Respondent were Industrial Relations Director Abrams and Personnel Manager Paul Westhoff. Thereafter the parties met on several occasions in an effort to reach a settlement agreement. The last meeting in which the parties met was held on May 8, 1981. The Company proposed a flat offer of $40,000 in complete settlement of the matter for all production and maintenance employees. The unit employees went into caucus and resumed discussions which became heated and hostile. De Grande undisputedly testified that the bargaining committee considered the Respondent's offer an insult and they rejected the offer as being insufficient. However, De Grande told Abrams he would get back to him by telephone and see what could be worked out. He also suggested that he and Abrams meet to discuss severance pay for two clerical employees and Abrams agreed to do so.

A month after the May 8 meeting, in June 1981, De Grande testified he called Abrams regarding the maintenance and production employees and their conversation was as follows:

> Well, we discussed several different issues. Number one, and I'm talking about the plant now, we still had issues pending as to severance pay, we had a matter of *pro rata* vacation that I felt that some—we had approximately twenty-one members that were entitled to *pro rata* vacation pay. And the issue of the pension program. Those three issues were open as far as the plant unit was concerned.

De Grande further testified that Abrams wanted him to accept the $40,000 and clear the table of all issues, specifically the *pro rata* vacation and pension issues. During this conversation they also discussed the severance pay of the two clerical employees, who had not received severance pay.

Harold Abrams further testified that in a telephone conversation on July 13, 1981, he and De Grande discussed settlement of the two clerical workers who had

[1] The facts set forth above are undisputed and are not in conflict in the record.

severance pay in their contract. They orally agreed on a settlement and he sent his letter (R. Exh. 1) to the Union which was confirmed by De Grande's signature on July 22, and his testimony which is consistent herewith. De Grande testified that, between May 1981 and January 1982, he spoke with Abrams once every month or 6 weeks by initiating a telephone call. However, Abrams testified that he did not have any further conversations with De Grande after the July agreement on clerical employees until early January 1982.

De Grande testified that he called Abrams in the latter part of January 1982 and told him that it was his feeling that the Union was ready to accept the $40,000 offer, if the Respondent would send it to the Union in a lump sum settlement, for distribution to the production and maintenance employees. De Grande continued to testify as follows:

> A. And his comment was, well, we had so many meetings over this, and he says, "This issue has been up in the air for so long," he says, "Well," I says, "You know, [can] you take my word for it?" And he says, "Well, no," he said, "I have to have it in writing," he says, "because this issue is out of my hands at this point and I would like a letter from you to that effect."
>
> Q. Did you tell him that you personally were accepting the offer at the time?
>
> A. *Yes, I did.* I told him that I would personally go back and recommend to the committee the acceptance of the $40,000 lump sum settlement and that I would make every effort possible to get it agreed to as rapidly as possible.

Abrams testified that the first telephone call he received from De Grande in January occurred on January 4, 1982, which he related as follows:

> Of course, we exchanged pleasantries and said I hadn't heard from him in a long time and we got down to serious business. He began by saying I assume the offer of forty thousand is still on the table and I said you've got to be kidding and he chuckled a little bit and said no, not really, and we talked a little bit because I was busy and I told him, I said, Ken, I'm tied up, can I get back to you and he said sure, so we terminated that phone conversation.

Thereafter, Abrams said he went to the office of Avery, president of the Respondent, and his testimony continued as follows:

> I went in and I said guess who called, I told him what happened and he mentioned, he said, get it in writing and that was about the extent of the conversation and I left, and sometime later, on January 13, called Mr. De Grande and apparently when the full substance of their conversation occurred as undeniably related above by De Grande.[2]

Immediately after his conversation with Abrams on January 13, De Grande said he called Greg Wilson, the Union's chief steward, and asked him to contact the other members of the bargaining committee and tell them it was his recommendation to accept the $40,000, and to get back to him as quickly as possible. He said Wilson called him back in March 1982, telling him that he had great difficulty contacting everyone but that all had agreed to accept the $40,000 offer. Thereupon, he sent a letter to the Respondent dated March 19, 1982, the substance of which was as follows:

> I apologize for the lapse in time since our last discussion in January of this year. But I hope you understand that it has become very difficult for me to make contact with the committee due to their varied interest and circumstances since the unfortunate plant closing in St. Louis.
>
> I would like to notify you at this time that the committee will accept your last offer of Forty Thousand ($40,000) Dollars in severance pay for the plant employees.
>
> We have not as yet worked out a formula for the distribution of the severance pay, but this can be done soon.
>
> I hope to hear from you as soon as possible so we can settle the matter of severance pay.

The Respondent (Harold Abrams) sent a reply letter dated April 20, 1982, to the Union (De Grande), the substance of which was as follows:

> Since your letter of 3/19/82 we've been missing each other by phone so I'm writing a response.
>
> To get to the point, the committee's decision to accept $40,000 is too late.
>
> Without reconstructing the entire history, it may be helpful to summarize. The announcement of Plant closing was made in July 1980. All production ceased in about October of that year. During that time and even beyond while disposal of assets was taking place, several meetings to discuss the effects of closing were held with you and your committee.

[2] Although De Grande evidently called Abrams once a month or every 6 months between May 9 and July 30, I do not credit De Grande's testimony that he called Abrams once a month or every 6 weeks after August 1, 1981, until January 1982, and I credit Abrams' denial that De Grande ever called him at any time after July and before January for the following reasons: I was not persuaded by the vague and uncertain manner in which De Grande testified about the approximate times that he called Abrams as well as by his failure to relate any specific substance of conversations he assertedly held with Abrams during that period. De Grande, an experienced negotiator, did not keep any records of such calls nor did he communicate in writing with Abrams on such an important matter (settlement offer) for a period of 5 months. Abrams, on the other hand, appreciating the significance of conversations regarding the offer, recorded telephone conversations with De Grande on four occasions, including January 4 and 13, 1982. All De Grande could recall was one telephone call he initiated in January but could only approximate that it occurred the latter part of January. Abrams recorded the latter telephone conversation as having occurred January 4, and I credit his account rather than De Grande's, because I was persuaded by his assured, businesslike, and convincing demeanor, instead of the vague, uncertain, unbusinesslike, and limited guesswork of De Grande, in dealing with a bargaining issue so significant to the person he represented. In any event, I do not find that these testimonial discrepancies in dates, as whether there was one or two conversations, materially affect how the crucial issue presented for determination is to be decided.

> The last time we met, your committee rejected a $40,000 settlement offered by the Company. That meeting had to be about a year ago.
>
> The books for that Plant have been closed. Throughout life we can all look back and think of things we should have done, which is probably what the committee has now decided. There is no easy way to say it. They missed the boat.

De Grande testified that neither he nor the Union was notified by the Respondent that the Respondent had withdrawn its $40,000 monetary offer, and that no such payment has been made to the Union. I find that the record evidence supports De Grande's testimony in this regard.

Abrams testified that production at the plant ceased October 1980. He said people last worked at the St. Louis facility in November 1981, and the collective-bargaining agreement expired March 7, 1982.

IV. ANALYSIS AND CONCLUSIONS

The uncontroverted evidence of record established that the Respondent notified the Union on July 28, 1980, that the Respondent was closing its St. Louis facility which it expected to occur by the end of September 1980. Pursuant to the Union's request, the Respondent met with the Union's business representative, De Grande, and his bargaining committee in August, and on several occasions thereafter, including May 8, 1981, to discuss the effects of the closing. During the May 8 bargaining session, the Respondent proposed a flat offer of $40,000 in complete settlement for distribution to all of the production and maintenance employees. After a hostile session, the Union rejected the offer and De Grande told the Respondent he would get back with it by telephone to further discuss the matter. De Grande did have several telephone discussions with the Respondent (Abrams) during May, June, and July 1981, which resulted in settlement of severance pay for the clerical employees, with settlement for the production and maintenance employees still outstanding.

The credited evidence further shows that after settlement for the clerical employees in late July (22-30), there was no communication between the parties on the outstanding issue of severance settlement for the production and maintenance employees until January 4, 1982. At that time, De Grande called Abrams and, according to De Grande, he advised Abrams that he felt the Union was ready to accept the $40,000 offer if the Respondent would send it in a lump sum settlement for distribution. According to Abrams, De Grande said, "I assume the $40,000 is still on the table and he [Abrams] replied, 'you've got to be kidding.'" After chuckling a little, De Grande said, "no" he was not kidding. I credit both versions because I was persuaded that De Grande said both versions to Abrams in the first telephone conversation on January 4, 1982. Accepting Abrams' account, it is particularly noted that Abrams did not put De Grande's assumption (that the offer was still open) to rest by advising him that the offer was withdrawn. Not having done so, the offer was still viable.

During a second telephone conversation between Abrams and De Grande on January 13, Abrams expressed how long the settlement issue had been hanging and told De Grande, as Avery, president of the Respondent, had instructed him, that he had to have the Union's acceptance in writing, adding that the matter was out of his hands. De Grande again undisputedly told Abrams the Union was accepting the $40,000 offer and that it would put its acceptance in writing. The conversation ended with no further communication between the parties until the Respondent received the Union's written acceptance of its $40,000 offer on or about March 21, 1982.

It is particularly noted, and I find, that at no time since the Respondent made its $40,000 offer settlement on May 8, 1981, did it ever withdraw or even suggest that its offer was withdrawn before it received the Union's written acceptance on or about March 21, 1982. In fact, the documentary evidence shows that, even in its letter to the Union 1 month (April 20, 1982) after its receipt of the Union's acceptance, the Respondent still had not advised the Union that its offer had been withdrawn. Instead, the Respondent's letter merely advised the Union that acceptance of the offer was too late.

The question raised by the evidence and presented for determination herein is:

> Whether Respondent's flat offer of $40,000 in settlement for the production and maintenance employees was still a viable offer for acceptance by the Union on January 4 and 13 (when the Union orally tended its acceptance), and on March 21, 1982 (when the Union formalized its acceptance in writing)?

In support of its position that the Respondent's settlement offer was still viable for acceptance on either date, counsel for the General Counsel cites *Pepsi-Cola Bottling Co. of Mason City, Iowa,* 251 NLRB 187, 189 (1980), enfd. 659 F.2d 87 (8th Cir. 1981), wherein the Administrative Law Judge held, with Board approval, that:

> There can be no quarrel with Respondent's view that under strict principles of contract law, an offer, once rejected, no longer exists. However, as the General Counsel correctly observes, "the Board is [not] strictly bound by the technical rules of contract law." *N.L.R.B. v. Donkin's Inn, Inc.*, 532 F.2d 138, 141-142 (9th Cir. 1976). . . . "[a] complete package proposal made on behalf of either party through negotiations remains viable, and upon acceptance *in toto* must be executed as part of the statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeased by an event upon which the offer was expressly made contingent at a time prior to acceptance. Respondent in the instant case took no such steps and when the Union abandoned all collateral demands, and elected to accept this complete package, a binding agreement was consummated. Respondent violated Section 8(a)(5) and (1) by refusing to execute a signed contract based upon its July 12 offer.

In affirming the Board's decision in *Pepsi-Cola Bottling Co.*, supra, the United States Court of Appeals for the Eighth Circuit, in response to the company's contention that traditional principles of contract law should govern the formation of collective-bargaining agreements said (659 F.2d at 89):

> The rule is well established that technical rules of contract do not control whether a collective bargaining agreement has been reached. See *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 550 . . . *NLRB v. Truckdrivers, Etc., Union No. 100*, 532 F.2d 569, 571 (6th Cir.), cert. denied, 429 U.S. 859 . . . .

The court continued (659 F.2d at 89):

> In a private commercial setting, the parties voluntarily contract with each other. Traditional contract law therefore provides that an offer terminates if rejected by the offeree, thus allowing the offering party free to strike a bargaining elsewhere, with no danger of being bound to more than one contract. In contrast, the National Labor Relations Act compels the Employer and the duly certified Union to deal with each other and bargain in good faith. Upon rejection of an offer, the offerer may not seek another contracting party. As explained by the Supreme Court, "The choice is generally not between entering or refusing to enter into a relationship, for that in all probability preexists the negotiations." *United Steel Workers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 580 . . . (1959).

However, the court went on to say in *Pepsi-Cola Bottling Co.*, supra, as follows (659 F.2d at 89):

> *We therefore agree with the Board's policy, as stated in its brief, that a contract offer is not automatically terminated by the other party's rejection or counterproposal, but may be accepted within a reasonable time unless it was expressly withdrawn prior to acceptance, was expressly made contingent upon some condition subsequent, or was subject to intervening circumstances which made it unfair to hold the offeror to his bargain.* [Emphasis added.]

The Respondent in the instant case does not contend that its May 8 $40,000 settlement offer was terminated by the Union's rejection thereof on the same date, that its offer was made contingent on a condition subsequent, or that intervening circumstances have made it unfair to hold it to its offer. Instead, the Respondent, relying on the above-quoted language of the court in *Pepsi-Cola Bottling Co.*, supra, contends that its May 8 $40,000 settlement offer was terminated by lapse of time prior to the Union's orally tendered acceptance on January 4 and 13, and its written acceptance on March 21, 1982.

In this regard, the Respondent argues that nearly a year has elapsed since it made its offer on May 8 which the Union rejected on the same day, but the evidence shows that the Respondent held bargaining conversations and discussions with union representative De Grande during May, June, and July 1981, even though the issue of settlement for the production and maintenance employees was not resolved. Consequently, the lapse of time from the cessation of bargaining discussions to the Union's initial acceptance of the offer (which was not withdrawn) was 5 months and approximately 1 week (from July 22–30, 1981, to January 4 and 13, 1982). Therefore, the Respondent contends that the specific question raised is whether a 5-month and approximately 1-week period constituted a reasonable period of time within which the Union should have accepted its offer before life of the offer should be deemed terminated by reason of lapse of time.

Although the court in *Pepsi-Cola*, supra, said the life of an offer unlimited by specified time "may be accepted within a reasonable time," I note that the Administrative Law Judge in the same *Pepsi-Cola* case used the "reasonable time" limitation in reference to an offer to individual striking employees for reinstatement to employment. In doing so, the Administrative Law Judge cited a decision by the Ninth Circuit Court of Appeals in *NLRB v. Murray Products*, 584 F.2d 934, 940 (1978), where the court said:

> An important element to be considered in determining the validity of an offer of reinstatement is whether it affords the offeree a reasonable period of time to consider it. Essentially, however, the validity of the offer depends on the situation in which the offeree finds himself as a result of the discrimination against him.

Since an offer of reinstatement to individual striking employees is directed to the individual employees, who may accept or reject the offer without consultation and concurrence with anyone else, I do not deem such an offer sufficiently analogous to a settlement offer of an employer to a union engaged in bargaining pursuant to the statutory obligation to bargain. Under the latter circumstances, the law is clear that rejection of the offer does not terminate the offer. Nevertheless, assuming that the Board would apply the "reasonable time" test to the life of the Respondent's settlement offer herein, it would appear that the principles of contract law would apply in determining what constitutes a reasonable time within which the Union should have accepted the offer before it is deemed expired by lapse of time. This would be true especially since the Respondent's settlement offer did not contain a time limitation for acceptance, as well as the fact that it cannot be assumed that such an offer would be viable indefinitely.

However, under the general principles of contract law, what constitutes a reasonable time for the acceptance of an offer depends on the circumstances in each case. (*Cited authority unnecessary.*) In the instant case, the Respondent's settlement offer did not designate a time date for acceptance and the subject matter of the offer is self-evident that time was not of the essence. The evidence also shows that the Respondent did not ever notify the Union that its offer was withdrawn or revoked before the Union communicated its acceptance to the Respondent on January 4 and 13 and again on March 21, 1982.

Although the parties did not communicate during the 5 months and approximately 1-week period, I considered the fact that the Respondent made the offer in a bargaining session (May 8) and the offer remained outstanding during the entire time the Respondent and the Union were under a statutory duty to bargain in good faith. Since it is not unusual for either party engaged in the bargaining process to test the genuineness of the offer, as well as the endurance of the other, it may be reasonably inferred from the evidence herein that the Union's delayed acceptance was tactical. That is, it is possible and more probable that the Union was waiting with hopes that the Respondent would increase the amount of its settlement offer. This is especially so since the Respondent was still present in St. Louis while it was winding down its business operations until November or December 1981. Such tactics as puffing and bluffing by the parties, with each calling the bluff of the other, is a normal part of the bargaining process. Any consideration of what is a reasonable time of the life of an offer must necessarily take into account such realistic factors as a part of that process. Having taken such factors into consideration, I would find that the Respondent's offer had not been terminated by a reasonable lapse of time.

The Union, noting that the Respondent closed its facility in November or December without increasing its offer, probably decided it had better accept the $40,000 settlement offered by the Respondent on May 8. However, be that as it may, the Respondent nevertheless had not withdrawn its offer when the Union called and advised the Respondent of its acceptance on January 4, and again during a telephone conversation on January 13. On neither occasion did the Respondent take the opportunity to advise the Union that its offer was withdrawn. Instead, the Respondent (Abrams) allowed the Union's assumption to persist that the offer was still on the table on January 4, by first exclaiming "you've got to be kidding." When De Grande assured Abrams that he was not kidding, Abrams simply said he was tied up and would get back to him. When Abrams got back to De Grande on January 13, he told De Grande the Respondent wanted the Union's acceptance in writing, and De Grande told him the Union would submit its acceptance in writing.

Under the above circumstances, if there were ever in fact a question as to whether the Respondent's settlement offer was terminated by lapse of reasonable time, the Respondent's January 13 request that the Union submit its acceptance in writing clearly answers that question in the negative. Consequently, whether 5 months and approximately 1 week was a reasonable time for the Respondent's offer to be deemed terminated by reason of lapse of time is not a genuine issue presented for determination herein.

Additionally, even if an offer is rejected, the Board in *Penasquitos Gardens*, 236 NLRB 994 (1978), enfd. 603 F.2d 225 (9th Cir. 1979), indicated, as the court noted in fn. 3, in *Pepsi-Cola*, supra, "that the power to accept an offer does not survive a rejection unless the evidence shows that the offeror intended or *gave the appearance of intending the offer to remain open.*" In the instant case, the Respondent (Abrams) certainly gave the appearance of intending its $40,000 settlement offer to be open for acceptance by telling the Union to submit its oral acceptance in writing.

I do not accept counsel for the Respondent's strained interruption of De Grande's quoted testimony that because Abrams might have told De Grande he had to have his acceptance in writing "*because this issue is out of my hand at this point* and I would like a letter from you to that effect," constituted a revocation, variation, or modification of the Respondent's May 8 offer. In fact the above-quoted language, in the context in which it was given, occurred after De Grande had already notified Abrams on both January 4 and 13 that the Union had accepted the Respondent's offer. Moreover, the said quoted language is also clear that De Grande understood Abrams to mean the Respondent wanted the Union's acceptance in writing, thereby assuring the Respondent it could rely on the Union's acceptance. There is nothing in the testimony of De Grande which suggests that he understood that the Union was making a counteroffer. There is also a lack of language there to suggest that he had any reason to understand that Abrams, who made the original May 8 offer, had to obtain approval from a higher official of the Respondent to accept the Union's acceptance. A mere reading of De Grande's formal letter of acceptance dated March 19 (G.C. Exh. 5) supports the conclusion that he was accepting the Respondent's offer of May 8. Under these circumstances, *Jensen's Truck Stop*, 234 NLRB 567, 570 (1978); and *Anaconda Co.*, 224 NLRB 1041, 1051 (1976), enfd. 99 LRRM 2634 (9th Cir. 1978), cited by counsel for the Respondent, are not applicable to the facts as found herein.

I therefore conclude and find on the foregoing evidence and cited legal authority that the Respondent's May 8 $40,000 settlement offer to the Union had not been terminated by lapse of time when the Union accepted it on January 4 and 13, or when the Union reduced its acceptance to writing on March 19, 1982, pursuant to the Respondent's request. Consequently, the Respondent is bound to execute and sign a written contract in accordance with the agreement reached on January 4 and 13. By not doing so, and attempting to revoke its offer in its letter to the Union on April 20, 1982, which was not only in timely, but also constituted at that time, and at all times thereafter, a refusal to bargain in good faith, the Respondent violated Section 8(a)(1) and (5) of the Act.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It having been found that the Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights by withdrawing its settlement offer after the Union had accepted it and by refusing to sign a contract in accordance with the agreement reached, the Respondent has failed and refused to bargain with the Union in violation of Section 8(a)(1) and (5) of the Act. The recommended Order will provide

that the Respondent cease and desist from engaging in such conduct.

Because of the character of the unfair labor practices herein found, the recommended Order will provide that the Respondent cease and desist therefrom, or in any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. *NLRB v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

On the basis of the above findings of fact and on the entire record in this case, I make the following

CONCLUSIONS OF LAW

1. The Respondent, Crown Cork & Seal Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

3. By attempting to withdraw its settlement offer after the Union had accepted it and refusing to execute a contract in accordance with the agreement reached, the Respondent has interfered with, restrained, and coerced its employees in violation Section 8(a)(1) and (5) of the Act.

[Recommended Order omitted from publication.]